IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3232 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

BABUBHAI SOMABHAI TAPODHAN

Appearance:

1. Special Civil Application No. 3232 of 2000

MRS VASAVDATTA BHATT for Petitioner No. 1

MR LN MEDIPALLY for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 21/09/2001

ORAL JUDGEMENT

Rule. With the consent of parties, the matter is taken up for final hearing today.

The respondent-workman was dismissed from service

on the ground that he had remained absent for sometime unauthorisedly. The workman thereafter raised industrial dispute which was numbered as Reference (LCN) no.106/95. The Labour Court came to the conclusion that the concerned workman was suffering from tuberculosis and that he was under the treatment of the Doctor of S.T. Corporation. It was also found by the Labour Court that it was not a case for dismissal, and therefore, the Labour Court interfered with the order of dismissal of the workman while exercising powers under Section 11A and passed the order of reinstatement of the respondent-workman with continuity of service with 50% backwages.

Learned Advocate Mrs. Bhatt appearing for the petitioner- S.T.Corporation has strongly argued that atleast some punishment should have been imposed on the respondent-workman. She, however, fairly conceded that it is not in dispute that workman was suffering from tuberculosis and that he was being treated by the Doctor of S.T.Corporation but according to her, the concerned workman had thereafter not put his leave report and had remained absent from duty unauthorisedly. It is no doubt true that the concerned workman should have been vigilant and he should have submitted his leave report, but looking to the fact that he was suffering from tuberculosis, the Corporation also should not have been that harsh so as to dismiss him from service as the Corporation could have taken a lenient view at the time of concluding the departmental enquiry.

In any case, this is not a fit case where the respondent-workman is required to be dismissed from service, and therefore, I find no justification in interfering with the order of the Labour Court so far as reinstatement of the respondent-workman is concerned. However, the workman should be vigilant in future in the matter of sending leave report. Mr. Medipally, learned Advocate appearing for the respondent-workman states that by way of punishment, the Labour Court had awarded reinstatment with 50% backwages, and therefore no further punishment should be imposed. However, in the instant case, in order to see that the workman would remain vigilant in future and submit leave report in advance, it would be in the fitness of things if 30% backwages is awarded instead of 50% backwages as ordered by the Labour Court.

In the result, subject to the aforesaid modification, the petition is partly allowed. The order of the Labour Court is modified to the extent that the

respondent workman is entitled to reinstatement with 30% backwages and continuity of service. The rest of the award of the Labour Court stands confirmed. The petitioner-S.T. Corporation is directed to make payment of whatever backwages the respondent workman is entitled under the modified award within a period of two months from today. Rule is made absolute accordingly.

(P.B. Majmudar,J.)

stanley-pbm.